INFORMATION LETTER

Not for Publication — NATIONAL CANNERS ASSOCIATION — For Members Only

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Consumers and Farmers Benefit In Absence of Price Supports

The abundant supply of canned foods at low cost was cited this week by N.C.A. President Louis Ratzesberger, Jr., as an example of how one segment of the agricultural economy satisfies consumer demand without help from the federal government.

In a principal address at the 41st annual convention of the Utah Canners Association, Mr. Ratzesberger said that canners have consistently opposed price supports and marketing controls on the products they process, and that the absence of such government aid has served as incentive for increased efficiency, higher production, and lower prices.

He stated:

"The canning industry's policy of opposition to government aid is not motivated by a desire to exploit either those who furnish the raw material nor the consumer who purchases canned foods. The record shows that both the farmer who supplies the canning crops and the consumer who eats the finished product have benefited from this policy. The genesis of the canning industry's policy is the conviction that the strength of an industry lies in its self-reliance."

If the parity concept were applied to canned fruits and vegetables, Mr. Ratzesberger said, their prices would be about 50 percent larger than actual selling prices today because there would have been no compelling force

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Mexican Farm Labor Program

Public hearings have been scheduled by the Senate Committee on Agriculture March 23 and by the House Committee on Agriculture March 24 on companion bills, S. 1207-H. R. 3480, to extend for three years the special authority providing for the use of Mexican nationals in agriculture.

Chairman Hope of the House committee said that there is a wide demand among farm operators for continuation of this program, and that last year more than 197,000 Mexican workers were contracted to U. S. farm employers.

Public Hearing Scheduled on Request for Walsh-Healey Act Exemption

Notice is given in the *Federal Register* of March 11 that a public hearing will be held by the Labor Department's Public Contracts Division on March 25 in the matter of an exemption from the Walsh-Healey Public Contracts Act on contracts for 32 canned foods annually purchased by the Quartermaster Corps.

The Labor Department announcement states that the Secretary of the Army has made written findings that the conduct of government business will be seriously impaired by the inclusion of the representations and stipulations of Section 1 of the Walsh-Healey Act in contracts for these canned foods.

The N.C.A. has requested an appearance at the hearing, at which canners will describe how, in the absence of an exemption, the Walsh-Healey

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QM Market Center System to Purchase All Subsistence

The procurement of all subsistence by the Office of the Quartermaster General will be transferred from the jurisdiction of the Chicago, Oakland, and New York procurement agencies to the Quartermaster Market Center System, effective March 16.

Personnel handling canned foods procurement will continue in their present locations for the time being, but ultimately they will be moved to the headquarters of the QM Market Center System in Chicago and its nine purchasing offices. Headquarters is located at 226 West Jackson Blvd., Chicago, and is under the command of Col. A. L. Bivens.

The Market Center System is a procurement function that has handled the purchase of perishable foods. The transfer to it of responsibility for nonperishable procurement centralizes authority for food procurement at the purchase level and indicates a trend toward centralized authority at the policy level.

This change in the table of organization of the QMC will have no effect on the policy or programs of canned foods procurement established in the Office of the Quartermaster General.

In addition to its headquarters in Chicago, the Market Center System has purchasing offices in Columbia, S. C., Denver, Fort Worth, Los Angeles, New Orleans, New York City, Richmond, Va., San Francisco, and Seattle.

Dietetic Canned Foods

The new N.C.A. bulletin, *Dietetic Canned Foods*, which was released just prior to the February Convention, has already been mailed to N.C.A. members, and additional copies are being sent out each day in response to an active demand. This has been further stimulated by an advertisement appearing in current issues of the *Journal of the American Medical Association*, offering the bulletin to physicians.

The 62-page bulletin is designed to serve a number of purposes. One of these is to supply the medical profession, nutritionists, and those of the general public who need special foods with reliable data on the composition of dietetic canned fods. This information, in convenient tabular form, includes the proximate composition, caloric value, and sodium and potassium content of 19 fruits, 7 juices, and 15 vegetables, all of which were collected and analyzed as a project in the National Canners Association-Can Manufacturers Institute Nutrition Program.

Also of interest to consumers is a section on the relation of dietetic foods

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PERSONNEL

Concord Grape Association

Eleven Concord grape juice processors, with plants in New York, Pennsylvania, and Ohio, have organized a non-profit research corporation to be known as the Concord Grape Cooperative Development Association.

The group lists as its objectives the solution of production problems, improvement of quality and quality control methods, development of new processing equipment and methods, and evolving new grape products and by products.

Officers of the association are:

President—A. D. Elabarger, Keystone Cooperative Grape Assn., North East, Pa.; vice president—George Page, D. W. Putnam Co., Hammondsport, N. Y.; secretary—Robert Fisher, Fisher-Spiegel, Inc., Geneva, Ohio; treasurer—Arthur S. Wolcott, Seneca Grape Juice Corp., Dundee, N. Y.

Headquarters for research activities are at Penn Yan, N. Y. Ralph F. Celmer, a consulting chemist-technologist who was engaged as director of research some months ago, designed and established the association's Penn Yan pilot plant and laboratory, and will supervise all research projects undertaken there.

Canadian Food Processors

The Canadian Food Processors Association elected the following officers recently at the association's annual convention:

President—S. T. Preston, Preston's Pure Preserves Ltd., Ville St. Laurent, P. Q.; first vice president—F. T. Sherk, H. J. Heinz Co. of Canada, Ltd., Leamington, Ont.; second vice president—R. R. Furlong, Burns and Company, Calgary, Alta.; treasurer—W. H. Heeney, Heeney Frosted Foods, La Prairie, P. Q.; secretary-manager—P. R. Robinson, Ottawa (reelected).

Foreign Agricultural Service

Greater emphasis on development of foreign markets and greater volume of international trade is the objective of the new Foreign Agricultural Service, established March 11 in the U. S. Department of Agriculture.

The Foreign Agricultural Service, with Romeo E. Short in charge, succeeds the Office of Foreign Agricultural Relations.

Forthcoming Meetings

March 16—Tennessee-Kentucky Canners Association, Annual Meeting, Noel Hotel, Nashville

March 17-18—Northwest Canners Association, Annual Meeting, Chinook Hotel, Yakima, Wash.

March 19-20—Tri-State Packers Association, Inc., Spring Meeting, Lord Baltimore Hotel, Baltimore

March 23-24—Canners League of California, 49th Annual Directors Conference, Santa Barbara Biltmore, Santa Barbara

March 23-24—Virginia Agricultural Extension Service, Virginia Canners School, Hotel Richmond, Richmond

March 24—Wisconsin Canners' Safety Institute, Hotel Loraine, Madison

March 25—Wisconsin Canning Technology Conference, University of Wisconsin, Madison

March 29-31—United States Wholesale Grocers Association, Convention and Exposition, Shoreham Hotel, Washington, D. C.

April 16—Indiana Canners Association, Spring Meeting, Claypool Hotel, Indianapolis

April 16—Tidewater Canners Association of Virginia, Inc., Annual Meeting, The Tides Inn, Irvington

May 5-6—Pennsylvania Canners Association, Sales Clinic, Pocono Manor, near Stroudsburg

June 14-15—Michigan Canners Association, Spring Meeting, Park Place Hotel, Traverse City

October 15-17—Florida Canners Association, Annual Meeting, Casa Blanca Hotel, Miami Beach

November 2—Illinois Canners Association, Fall Meeting, Chicago

November 9-10—Wisconsin Canners Association, 49th Annual Convention, Schroeder Hotel, Milwaukee

November 9-10—Michigan Canners Association, Fall Meeting, Pantlind Hotel, Grand Rapids

November 19-20—Indiana Canners Association, Annual Convention, French Lick Springs Hotel, French Lick Springs

November 23-24—Pennsylvania Canners Association, 39th Annual Convention, Penn Harris Hotel, Harrisburg

December 3-4—Tri-State Packers Association, Inc., 50th Annual Meeting

December 10-11—New York State Canners and Freezers Association, Inc., 68th Annual Convention

PUBLICITY

Canning Week in Maryland

Governor Theodore R. McKeldin of Maryland has set aside March 15-21 as Maryland Commercial Canning Week in recognition of the contributions brought to all the people of the state through the joint efforts of farmers, commercial fishermen, canners, and can makers.

The Governor's proclamation points out that the marketing of Maryland products in cans brings $75,000,000 into the state each year, and that thousands of Maryland citizens are benefited by the economic activity generated by the industry.

Seventeen Magazine

"Like goodies with a flair? Then use these recipes for a party cake, a dress-up salad, different chicken," says the article entitled "A Can of Pineapple Makes . . .", appearing in the March issue of *Seventeen* magazine.

The three canned pineapple recipes are easy to clip and file and easy to use.

American Weekly Magazine

Amy Alden, food editor, used canned foods as the feature in her two food articles in *The American Weekly* magazine, which was distributed with leading newspapers on March 8.

Her major article, entitled "Surprises With Soups", carried a spread of color photographs of the foods discussed. She began, "Not so long ago it was a poor kitchen in which a soup pot did not simmer on the stove. Today this has given way to canned soups so varied in flavor that they please every taste. Canned soups also serve as sauces." The eight recipes used the following canned foods: cream of celery, cream of mushroom and tomato soups; consomme, crab meat, pineapple, and pimiento.

"Tasty Treats with Tuna", featuring six recipes using tuna and a black and white photograph, was the title of a second article. Canned mushrooms, cream of mushroom soup, tomatoes, tomato sauce, and peas were used in the recipes in addition to the tuna in each.

Invitations for Bids

Chicago Quartermaster Depot, 1819 West Pershing Road, Chicago 9, Ill.; Oakland Quartermaster Procurement Agency, 124 Grand Avenue, Oakland 12, Calif.

Veterans Administration—Procurement Division, Veterans Administration, Wash. 25, D. C.

The Walsh-Healey Public Contracts Act will apply to all operations performed after the date of notice of award if the total value of a contract is $10,000 or over.

The QMC has invited sealed bids to furnish the following:

BLENDED JUICE—24,203 dozen 46-oz. cans of orange and grapefruit juice blended. Bids due in Chicago under QM-11-009-53-141 by March 19.

BLENDED JUICE—266,585 dozen No. 3 cyl. cans of orange and grapefruit juice blended. Bids due in Chicago under QM-11-009-53-140 by March 19.

GRAPE JUICE—3,451 dozen No. 10 cans. Bids due in Chicago under QM-11-009-53-142 by March 31.

Walsh-Healey Exemption

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Act stipulations in government contracts affect canners.

Following is the text of the notice of the public hearing:

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR, Part 20]

CONTRACTS FOR CERTAIN CANNED FRUITS AND VEGETABLES

EXEMPTION FROM PROVISIONS OF WALSH-HEALEY PUBLIC CONTRACTS ACT

In accordance with §201.601 of the Walsh-Healey Public Contracts Act regulations (41 CFR 201.601), the Secretary of the Army has made written findings that the conduct of Government business will be seriously impaired by the inclusion of the representations and stipulations of section 1 of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35) in contracts awarded on or before December 31, 1953, for canned fruits and vegetables of the following varieties:

Apples.	Juice, citrus.
Applesauce.	Juice, grape.
Apricots.	Juice, pineapple.
Asparagus.	Peas, green.
Beans, lima.	Peaches.
Beans, string.	Pears.
Berries.	Pineapple.
Carrots.	Plums (prunes).
Catsup, tomato.	Potatoes, sweet.
Cherries, sour.	Pumpkin.
Cherries, sweet.	Puree, tomato.
Corn, cream style.	Sauce, cranberry.
Corn, whole grain.	Spinach.
Figs.	Tomatoes.
Fruit cocktail.	Tomato juice.
Grapefruit.	Tomato paste.

Pursuant to section 6 of the Walsh-Healey Public Contracts Act, and, upon the basis of this finding, the Secretary of Labor has been requested by the Secretary of the Army to grant an exemption from the provisions of section 1 of the act permitting the award of contracts for the above varieties of canned fruits and vegetables for the balance of the calendar year 1953 without inclusion of the representations and stipulations of that section.

Notice is hereby given of a public hearing on this matter before the Acting Administrator of the Public Contracts Division or his authorized representative at 10:00 a.m. on Wednesday, March 25, 1953, in Room 5406, Department of Labor Building, Fourteenth Street and Constitution Avenue, N. W., Washington, D. C., at which interested persons may appear and submit data, views and arguments either in support of or in opposition to this proposal. Written statements in lieu of personal appearance may be filed by mail at any time prior to the date of the hearing, or may be filed with the presiding officer at the hearing. Persons appearing at the hearing will be afforded an opportunity to file, within 7 days from the close of the hearing, briefs relating to the issues raised at the hearings.

Signed at Washington, D. C., this 6th day of March 1953.

MARTIN P. DURKIN,
Secretary of Labor.

STATISTICS

Green Peas for Processing

An increase of about 4 percent over 1952 in the planted acreage of green peas for processing is indicated for 1953, according to the Bureau of Agricultural Economics.

Assuming a loss in plantings of about 7 percent, in line with recent years, the indicated planted acreage would result in about 430,000 acres for harvest. This compares with 422,890 acres harvested last year and an average of 431,480 acres for the 1942-51 period.

Of the 462,830 acres in prospect for processing this year, intentions reports from processors indicate that 338,900 acres will be planted for canning, about 3 percent above last year's plantings but 12 percent below the 10-year average.

State	1952 indicated	1952 planted	1953 indicated	Percent change, 1953 indicated and 1952 planted
	(acres)	(acres)	(acres)	
Maine	9,000	6,250	8,400	+34
New York	27,500	24,000	25,400	+ 5
Pennsylvania	11,800	14,000	14,300	+ 2
Ohio	3,000	2,500	2,200	−12
Indiana	2,900	2,650	2,400	− 9
Illinois	29,600	29,000	29,600	+ 2
Michigan	6,100	6,100	6,700	+10
Wisconsin	137,500	133,000	131,800	− 1
Minnesota	61,000	58,600	61,500	+ 5
Iowa	5,100	5,700	5,200	− 9
Delaware	2,550	3,200	3,500	+ 9
Maryland	8,600	7,800	8,000	+ 3
Virginia	2,100	2,000	2,300	+15
Idaho	10,500	9,800	9,800	....
Colorado	5,100	3,900	4,100	+ 5
Utah	10,600	7,800	8,000	+ 3
Washington	65,000	61,200	65,300	+ 7
Oregon	61,000	49,000	55,300	+13
California	10,700	10,600	11,900	+12
Other states[1]	9,360	7,130	7,330	+ 3
U. S. Total	479,010	444,230	462,830	+ 4.2
For canning and other processing	360,410	329,400	338,900	+ 2.9
For freezing	118,600	114,830	123,930	+ 7.9

[1] Ark., Ga., Kans., Mo., Mont., Nebr., N. J., Okla., Tenn., W. Va., and Wyo.

Spinach for Processing

A total of 52,200 tons of spinach for processing in 1953 is indicated from the winter crop in Texas and the early spring crop in California, according to the Bureau of Agricultural Economics. This is about 10 percent below the 1952 production of 58,200 tons but is 6 percent above the average annual production of 49,170 tons for the 1942-51 period.

The 1953 acreage for harvest in the two states is estimated at 11,700 acres, compared with 13,000 acres harvested in the winter and early spring of 1952 and an average annual harvested acreage of 15,450 acres during the preceding 10-year period.

The 1953 acreage of winter crop spinach in Texas is indicated at 4,500 acres, compared with 5,000 acres last year, and the early spring crop in California is indicated at 7,200 acres, compared with 8,000 acres last year.

Citrus Fruit Production

Slightly higher volume of oranges but smaller output of grapefruit during the 1952-53 season is estimated by the Bureau of Agricultural Economics.

Total orange production for the 1952-53 season is estimated at 121 million boxes, 2 percent more than the 1951-52 crop and 18 percent above the 1941-50 average. Of the total harvested to March 1, 1952, processors used about 52 percent as compared with about 47 percent to the same date a year ago.

Grapefruit production is estimated at 36.4 million boxes, 10 percent below last season and 29 percent below average. The 400,000 boxes indicated for Texas is only about 25 percent of the 16,772,000 boxes obtained on the average during the 1941-50 period.

	1950–51	1951–52	1952–53 indicated
	(thousands of boxes)		
Oranges, total	116,910	118,090	120,950
California	45,210	38,410	44,000
Florida	67,300	78,600	75,000
Texas	2,700	300	1,000
Arizona	1,400	730	900
Louisiana	300	50	50
Tangerines, Florida	4,800	4,500	4,900
Grapefruit, total	46,580	40,500	36,420
Florida	33,200	36,000	31,000
Texas	7,500	200	400
Arizona	3,150	2,140	2,700
California	2,730	2,160	2,320
Lemons, Calif.	13,450	12,800	12,800
Limes, Florida	280	260	320

MEETING OF COMPETITION

Austern Addresses New York Bar on Robinson-Patman Act

H. Thomas Austern, Chief Counsel of the N.C.A., delivered an address on the Robinson-Patman Act at the Fifth Annual Meeting of the Section on Antitrust Law of the New York State Bar Association, on February 19, just prior to the opening of the 46th Annual Convention of the N.C.A.

Mr. Austern's paper included the following four general propositions about the Robinson-Patman Act:

"*First*—the Robinson-Patman Act has popular appeal not only as an 'antitrust' law but also among many American businessmen who appear to want the limitations on freedom of commercial action that it so ineptly embodies.

"*Second*—while minor Congressional tinkering may occur, any outright repeal or drastic modification of the Act is highly unlikely. To the extent that its ambiguities can be surmounted, the effort may have to be made largely on the present intriguing text of the Act.

"*Third*—an astute, truly expert, and realistic Trade Commission could by sensible interpretation make it work.

"*Fourth*—because there will always remain large areas of uncertainty, any determinations that the Act has been violated should have only *prospective* effect through cease and desist orders, and that *retrospective* punishment through criminal penalties and treble damage suits should be eliminated."

Mr. Austern went on to say that:

"It is a commonplace that the antitrust concept has become a vigorous article of political faith in the United States. Despite the many charges that the Patman Act is an anticompetitive wolf deceptively dressed in historic antitrust clothing—or that to protect competitors it frustrates competition—it undeniably shares the momentum of popular appeal as an 'antitrust' law. More interesting is the fact that the Act commands popular support among many businessmen.

"The task of penetrating the real reasons for this popularity perhaps ventures into sensitive areas. Some, of course, can be readily perceived. Brokers not unnaturally will defend to the death the protected enclave they have achieved in Section 2 (c).[1] It may well be that the concept of 'proportionately available' in Sections 2(d) and 2(e) is a legal monstrosity—a negative prohibition awkwardly framed as an affirmative command of availability—but the practical effect has been that allowances for advertising and promotion have actually been spent for these purposes rather than pocketed by the recipient.

"In those business reaches where large buyers have dominant positions, the Act furnishes to sellers and smaller purchasers a comforting bulwark against discounts and allowances formerly exacted or granted irrespective of cost savings. Here the Act derived its original impetus, and the recent increased use of Section 2(*f*) is but an historical reprise. Of course, most manufacturing enterprises buy as well as sell, but the commercial emphasis is more often on the sales gross. Required equality in the acquisition cost of raw materials is often regarded as less painful than giving some customers deep discounts or offlist sales prices. For most businessmen believe that rugged competition can still exist in areas other than price.

"Small businessmen, particularly in retailing, are persuaded that the Patman Act gives them a relative equality they might not otherwise obtain. Even despite their disappointments about brokerage, it is doubtful that voluntaries or co-operatives would advocate repeal. Among large corporations—including some that have been deeply bitten by treble damage litigation—the Patman Act also finds many warm friends.

"Admittedly, in this developed commercial affection there are many motivations. Perhaps some are anticompetitive, reflect the desire for soft competition, and are grounded on a desire for stabilized pricing. There appears to be a considerable identity between those who most quickly and vigorously defend the Patman Act from any change, and those who successfully sponsored the Fair Trade exception to the Sherman Act.[2] Propaganda has undoubtedly played a part, but it is doubtful whether so large a group of hardheaded businessmen have been convinced by exhortation alone.

"On the basis of a fairly prolonged inquiry, I have come to suspect that—despite the legal criticism, the confusion, and the frequent incredibly inept techniques of interpretation—the Robinson-Patman Act embodies certain standards of conduct that businessmen in many industries appear to want. Whether this desire is consistent with the Sherman Act—whether it is a reversion to N.R.A. thinking—is perhaps beside the point. Whether the predominant prevalence of a seller's market during the last decade and a half contributed to this view of the Act is likewise academic.

"Granting that there are a good number of businessmen who oppose the law—certainly as presently administered—and see little hope of reform short of Congressional surgery, yet it is surprising that so many others appear to want the limitations that the Patman Act, when intelligently interpreted, would impose on their competitors' operations even though at the same time their own freedom is comparably curtailed. They profess to like these 'rules of the game' no matter how difficult it is for their lawyers to bound the lawful playing field or for economists to discern the economic goal posts.[3]

"Only three weeks ago one of the grocery trade journals editorially called this statute 'the whole framework upon which food trade practice is built,' and reported that most food manufacturers and those in grocery distribution preferred the economic containment of the Patman Act instead of 'slugging it out without legal restraint.' I believe that this view is far from unique in American industry.

"Though lawyers may analyze and economists criticize, the facts of political life are determined by what the voters think. The story of the repeated attempts to amend the Robinson-Patman Act to legalize beyond doubt the meeting of competition through the non-conspiratorial granting of freight equalization has elsewhere been detailed.[4] It demonstrates the remarkable resistance of the Act to any change. The recent re-emergence of these same bills does not negative my belief that while there may be some legislative tinkering with

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[1] This is usually done in terms of defending the statute as a whole. For an interesting adoption of the theory that the pricing practices of a private business should be regulated as though it were a public utility, see the pamphlet currently widely circulated by the National Food Brokers Association, "*An Old Enemy Haunts The Food Industry*—An important message showing what uncontrolled price discriminations would do to you and the food industry." See also *N. Y. Journal of Commerce*, Feb. 5, 1953, p. 10, col. 4.

[2] In a recent "Economic Analysis of the Robinson-Patman Act" before the American Marketing Association (Chicago, Dec. 29, 1952), Professor M. A. Adelman suggested that this was fully consistent because the Patman Act necessarily discriminates against the lower-cost buyer and "fair trading" completely forbids the reflection of lower marketing costs in lower prices.

[3] Oscar Wilde once observed that discourtesy might be defined as the manners of others. In a widely circulated summary prepared by the Research Institute of America, and entitled "Pricing, Selling, Advertising in a Competitive Market" (Sept. 1952), p. 3, the point is made that, "total compliance with the federal rules on pricing and advertising practices is a dream; total enforcement would be a businessman's nightmare." Yet the conclusion is, "Although some reputable firms have been injured by FTC attack, in general the agency has been a boon to legitimate business by driving from the market place quacks, shysters and impostors who could not be reached by private litigation. . . . More important, the Commission works effectively to prevent big business from roughing its smallest competitors in the areas of hot competition."

[4] Simon, *Geographic Pricing Practices* (1950); Latham, *Politics of Basing Point Legislation*, 15 L. & C. Prob. 272 (1952).

Section 2(b)—and perhaps, now unnecessarily, with the definition of 'price'[5]—any outright repeal or drastic modification of the Act is highly unlikely.[6]

"Even on the narrow issue of permitted freight equalization the forces arrayed sometimes have appeared to be in such equilibrium that serious danger existed that tangential compromise might yield provisions even more confusing.

"Of course, if the residual hope that the Commission may still by interpretation sensibly canalize the statutory hodgepodge—at least in the areas delineated below—turns out to be wholly forlorn, the number of those who will insist upon fundamental Congressional re-examination will multiply.

"Admittedly, basic re-evaluation of all of the antitrust laws appears to be in the air. Whether this takes the form of inquiry by a public commission, more hearings by Congress, or, as *Fortune* Magazine suggested in its February, 1953, issue (pp. 107-08), through Department of Justice soul-searching, it would be neither novel nor I suspect dramatically different from the many like efforts in the past. Introspective investigation of fundamental and dynamic articles of political faith more often than not lead merely to confirmation. One of the intriguing parts of the recent Business Advisory Council Report[7] is the suggestion that the best path to legal certainty lies in the Rule of Reason. If this road is followed, one can hardly deny that what Corwin Edwards has called the four different principles inexpertly merged in the Robinson-Patman Act[8] should be re-examined.

"Yet the distance is great between learned analysis with definitive report, and the final enactment and approval of some different statute. This is true no matter how fully the re-examination may be grounded on a realistic investigation of the market facts as contrasted with oral polemics in a Congressional hearing. Hence I offer as my second operating premise the prospect that for the next several years at least we shall still be dealing with the fascinating text of the Robinson-Patman Act as it now stands."[9]

Mr. Austern also highlighted some of the key interpretations of the Federal Trade Commission, in the following passages:

"First, there is need for a new look at the actual economic effect of any price discrimination. Many have become persuaded that the bulk of criticism flows from what the Commission has done—or more accurately refused to do—with the requirement of the Act that a price difference can be found unlawful only where it may adversely affect competition. No other area has produced comparable confusion—or has fanned the endless discussions differentiating effect upon competition from effect upon competitors—or led to as diffuse policy statements and extreme overstatements of position.

"Two starting points cannot be challenged. The statute requires something more than a difference in price. The Commission likewise in practice makes as full a field investigation as it can of the actual economic impact of any pricing method concerning which it has received a complaint. As I have elsewhere suggested,[10] for almost a decade the Commission admittedly put some content into the phrases 'may be' and 'substantially.' It would not act unless it found that realistically there was a squeeze in the market. The loss of business by one competitor was not enough, nor was some theoretical loss of profit. The pincers had to be found to cause some real injury leading to an inability to maintain a place in the competitive fight. Moreover, there was a real effort to prove competitive effect in the hearing on the complaint. Inferences, strained presumptions, and supposedly compelled assumptions were not resorted to by the Commission as an expert administrative agency.

"Then came the *Moss* and the *Morton Salt* cases. These were followed by the distortion of Section 2(a) in the *Standard Oil* case in an effort to buttress what the Commission wanted to do with Section 2(b).[11] The end product was the now familiar rule that violation is established merely by showing two different prices to competing purchasers—with all else being presumed. Indeed, as many read the Commission's brief in *Minneapolis-Honeywell*,[12] the Commission view may be that once a 'substantial' or 'significant' difference in price is shown, the likelihood of competitive injury is so 'obvious' as to make the burden of disproving it well-nigh impossible. What is significant or substantial is often either glossed over or submerged in the generality of a finding in the words of the Act."[13]

"This interpretation, I believe, is unnecessary, unrealistic, and the principal source of difficulty under the Act. Its enormity becomes fully revealed when it is applied in a complaint against a buyer under Section 2(f) as in the *Kroger* and *Safeway* complaints. Since the Commission always should have the facts, it ought forthrightly to plead and to prove them. In most cases, it could, as it did in the *Corn Products* case, demonstrate actual injury to numerous competitors either at the primary or secondary level.

"Doing so would dissipate the charge—which Dr. Edwards denies in his apologia—that the Commission interprets the Act to protect even a single competitor from injury or inconvenience.[14] Doing so would alleviate many of the difficulties under Section 2(f) and many of the apprehensions about how proof might be made in a treble damage action.

"The charge might then be dissipated that on the Commission's theory of what Sections 2(a) and 2(b) mean, every American business not pursuing a single price policy is violating the law, and that the issuance of complaints is somewhat of a lottery. As a further suggestion, the Commission might consider periodic releases summarizing typical instances in which it has not proceeded because of the absence of any disclosed likelihood of any real effect upon competition."

In the remainder of his discussion, Mr. Austern suggested that the Com-

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[5] See the reference to the Findings and Opinion in *National Lead*, F.T.C. Dkt. 5263, Jan. 12, 1953.

[6] As one who has sung often and stridently in the chorus demanding drastic and immediate Congressional amendment, I must acknowledge that the views expressed in my first and second propositions represent conclusions recently and reluctantly reached. The day perhaps will never come when every antitrust lawyer ceases to harbor the secret desire to write the perfect improved version of the Robinson-Patman Act. Yet if politics is the art of the possible, the views expressed may commend themselves.

[7] *Effective Competition*, A Report To The Secretary of Commerce, Nov. 14, 1952, *passim*.

[8] Edwards, *The Bearing Of The Robinson-Patman Act Upon The Policy Of The Sherman Act*, Before the Practicing Law Institute (N.Y. Dec. 6, 1952) pp. 1-2.

[9] Canadian lawyers and businessmen may be having a comparable experience. The 1952 amendments to the Canadian Combines Investigation Act and the Criminal Code embodied some novel applications of Robinson-Patman Act concepts. A new Section 498A prohibits any discount, allowance, or direct or indirect price concession that is not available at the time of sale to competitors buying a like quality and quantity. There are no references to competitive effect or cost justifications, *but* to be illegal discrimination must be "part of a practice." The debates make clear that meeting competition is lawful only when not a practice. See *Official Report of Senate Debates*, Ottawa, June 18, 1952, pp. 448-49. These amendments derive from the so-called MacQuarrie Report of the Committee to Study Combines Legislation (Ottawa, March 8, 1952) which, even recognizing the different legislative development and constitutional limitations, makes interesting reading to American students of trade regulation enactments.

[10] See Austern, *Required Competitive Injury and Permitted Meeting of Competition*, Robinson-Patman Act Symposium (CCH 1947) pp. 63, 67-69.

[11] *Id.* at 74.

[12] *Brief for Commission*, pp. 47-75 (1952).

[13] Professor Oppenheim believes that this practice "has come perilously close to converting the Commission's prima facie case into a virtual per se violation based on a mere price difference." *Op. cit. supra* note 4, at 1205. Compare *Hearings Before Subcommittee On Monopoly of the House Judiciary Committee on H. R. 2820 and S. 719*, Ser. No. 1, Part 5, 82d Cong., 1st Sess., 140, 144 (1951).

[14] Edwards, *op. cit. supra* note 14, p. 7.

mission's reception of cost accounting justification appeared jaundiced, and that it might well consider acceptance of cost accounting in good faith rather than insisting upon what its accountants and lawyers urge is alone proper cost accounting.

The final part of his talk was devoted to a discussion of the suggestions that because of the inescapably vague contours of the Patman Act, a determination that it had been violated should result only in a cease and desist order, and that criminal penalties and treble damage liability should be eliminated.

DEATH

G. R. Garretson

G. R. Garretson, former owner and president of The J. B. Inderrieden Co., died suddenly March 7.

Mr. Garretson was active in affairs of the N.C.A. some years ago. He served on the Board of Directors, 1924-26, as a member of the Finance Committee, 1938-41, and also on several committees.

He has made his home for several years in Wheaton, Ill., where he had taken an active interest in community affairs.

Ratzesberger at Utah

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to improve efficiency under such paternalism.

Mr. Ratzesberger also asserted that retail prices of canned fruits and vegetables have advanced less than prices of other foods and today are the housewife's "best food buy."

A press release reporting these comments by Mr. Ratzesberger was issued by N.C.A. and mailed to metropolitan newspapers in Utah.

CONGRESS

International Food Reserve

On behalf of himself and 23 other Senators, Senator Murray (Mont.) on March 11 introduced S. J. Res. 56, aiming at the creation of an International Rood Reserve under auspices of the Food and Agriculture Organization of the United Nations.

The resolution authorizes and directs the United States representative in the UN and the FAO to "enter promptly into international negotiations for the purpose of preparing a specific plan and a proposed international agreement on the creation of an International Food Reserve." The plan and the agreement would be submitted to Congress for approval.

The International Food Reserve would provide for storage of raw or processed agricultural commodities, would be designed to prevent extreme price fluctuations in the international market, to prevent famine and starvation, and to absorb temporary market surpluses of agricultural products.

The general idea of an international food reserve first came to public attention in 1946 when the Director-General of the FAO proposed a "World Food Board," and again in 1949, when an "International Commodity Clearing House" was proposed.

Dietetic Canned Foods

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to therapeutic diets, listing the various types of dietary plan used to meet one or another requirement, such as low-calorie, diabetic, low-sodium, etc. The importance of professional guidance in any dietary control is emphasized.

For the canner of special dietetic canned foods, the bulletin serves to indicate both his opportunities and responsibilities. The data on composition show how the various types of canned food can be usefully applied in special diets. To be used intelligently, however, the food must be labeled accurately and informatively, and the bulletin furnishes guidance to that end. Foods for use in low-sodium diets must be prepared in a manner to avoid adventitious addition of sodium, and the ways in which this might occur are pointed out so that they may be avoided.

Completing the bulletin is a chapter on use of artificial sweetening agents as ingredients of canned fruits for use by diabetics or others who are on diets restricted in carbohydrate.

Call for 1953 *Directory* Copy

Canners are asked to examine the questionnaire forms for the 1953 edition of the *Canners Directory*, to submit necessary information for the compilation of the *Directory*, and to return these forms to the Association promptly, in the self-addressed, postage-paid envelopes provided.

It is calculated that an earlier publication of the *Directory* will greatly benefit the industry. It will mean that the *Directory* can be placed in the hands of brokers and other marketing outlets at a time that will facilitate year-round buying of canned foods.

As in past editions, the 1953 *Canners Directory* will list the name and main office address of each canning firm, location of factories operated by each firm in each state, and the canned food products packed by each firm within each state. Canners are asked to list the states and the cities and towns in which their canning plants are located, and to identify their products according to instructions in the questionnaire.

Canners also are asked to advise the Association of the existence or operation of any canning firm not listed in the 1952 *Directory*.

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